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SUGGESTED STATE WATER POLLUTION CONTROL ACT AND EXPLANATORY STATEMENT

Public Health Service,
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October 1950

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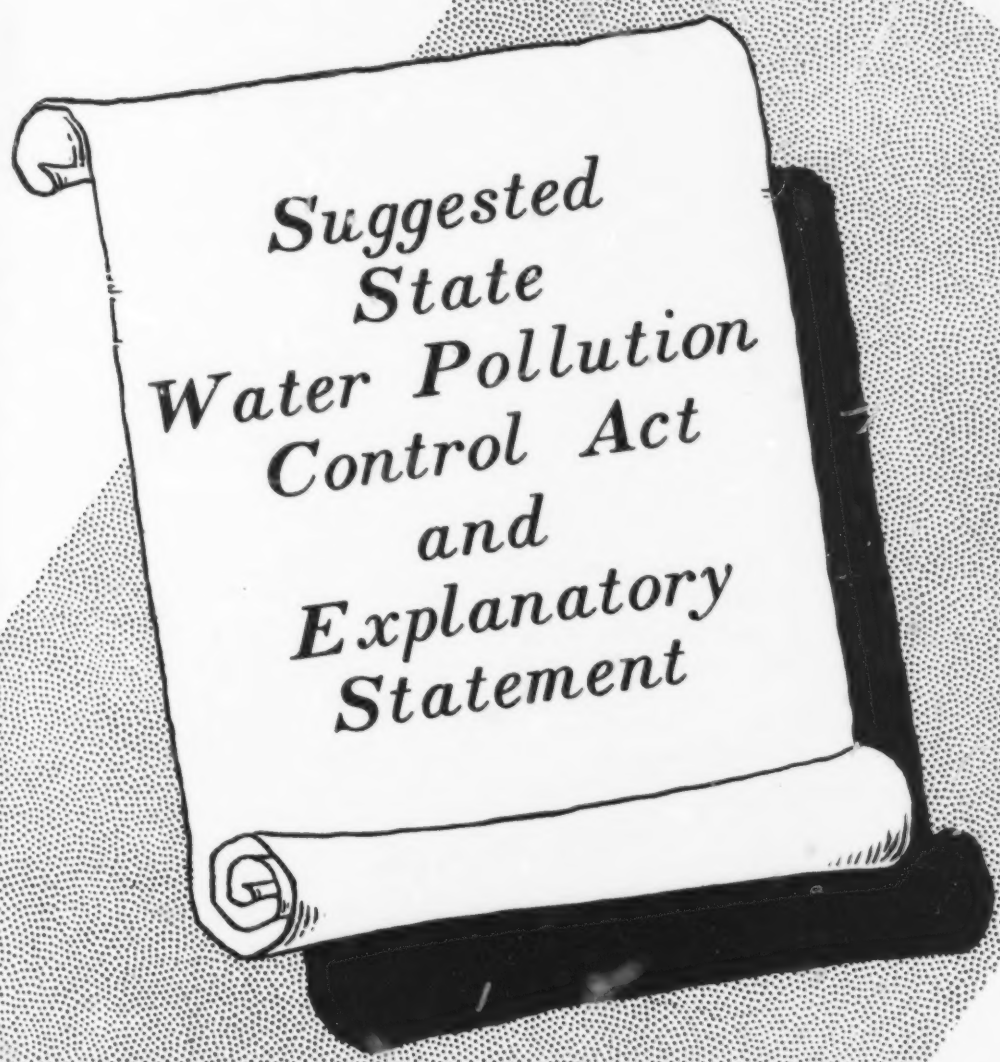

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FEDERAL SECURITY AGENCY

Public Health Service

DIVISION OF WATER POLLUTION CONTROL

October, 1950

INTRODUCTION

A sanitary environment is the first element of a comprehensive national plan for a healthier America. To produce a sanitary environment we must develop clean waters through the prevention and abatement of pollution.

Adequate State legislation is one of the principal means for ensuring the success of pollution control programs throughout the United States. The most carefully prepared laws, however, cannot solve the water pollution problem unless they are supported by an informed public.

In adopting the Water Pollution Control Act of 1948 (Public Law 845, 80th Congress), the Congress acted not only to recognize, preserve, and protect the primary responsibilities and rights of the States in producing clean waters, but also encouraged the enactment of uniform State laws as a means toward the attainment of this objective.

An earlier draft of the suggested State Water Pollution Control Act was reviewed by more than 800 individuals and organizations representative of all the water users in the United States. Later, a committee of consultants, representing the State water pollution control authorities and State officials having a broad background in legislative procedure, evaluated the draft and the comments received. The draft which is now suggested reflects in large measure the views of these individuals.

The Council of State Governments has endorsed this "Suggested State Water Pollution Control Act" and recommends it to the States for favorable consideration. For many years, the State legislation on water pollution control has been gradually progressing toward uniformity. The Public Health Service hopes that the suggested Act will facilitate this evolutionary process.

Leonard A. Scheele
Surgeon General

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The "Suggested State Water Pollution Control Act" has been endorsed by the Council of State Governments and recommended to the States in the Council's "Suggested State Legislation; Program for 1951" issued in November, 1950

EXPLANATORY STATEMENT

Increasing interest in development and conservation of our country's water resources has been reflected in the concern which legislatures have shown with the problem of water pollution. Within the last decade more than half the States have adopted new legislation in this field or strengthened existing laws, and in 1948 the Congress passed the Water Pollution Control Act, the first attempt by the Federal Government to join with the States in a comprehensive attack on the problem as a whole. A "Suggested State Water Pollution Control Act" has been prepared as a part of this effort.

The underlying concept and purpose of this legislation is to facilitate interstate cooperation for a more concerted attack on water pollution. Many benefits would be derived if the States adopted legislation uniform in basic principles. It is not expected that the States will repeal their existing legislation and adopt this suggested law. The process of obtaining uniformity is one of evolution. It is suggested that the States take a realistic look at their basic statutes in the field of water pollution control and compare them with the suggested law. Those familiar with State law in this field will find little that is new in the suggested draft. Basically, what has been done has been to adopt the best practices from existing State statutes and using these as a framework to develop a statute that could aid and strengthen the State programs.

A preliminary draft of the "Suggested Act" was submitted for comment to a large number of State sanitary engineers; lawyers; conservationists; industrialists; sportsmen's, wildlife and conservation, agricultural and recreational groups; national lay organizations; municipal organizations; and other persons interested in this field. Subsequently, the preliminary draft, together with comment which was received from all parts of the country, was considered and discussed by a board of expert consultants meeting in Washington. The "Suggested Act" was prepared and revised in light of comments and suggestions resulting from the foregoing procedures.

State water pollution control legislation developed traditionally out of the authority of health departments to preserve public health. In conjunction with this there was piecemeal lodging of concurrent water pollution control authority in several other departments of State governments such as those dealing with agriculture, fish and wildlife, and

mines and minerals which also had an interest in water pollution control. The modern approach to the problem is reflected in recent State statutes whose object is to preserve and improve water quality for all legitimate uses and do this through an agency that represents all affected interests in the State. Accompanying this has been a shifting emphasis from the mere abatement of existing pollution to the policy of preventing pollution in its incipiency.

In the early statutes the administrative approach was largely negative in character. That is, when a particular action was found to cause pollution the administrative agency was authorized to take steps to abate such pollution. The Suggested State Water Pollution Control Act follows the more recent statutes by authorizing the agency to develop a comprehensive program to deal with the problem in all waters of the State. Under this approach, the agency, having determined permissive limits of waste discharges into the waters of the State, uses its enforcement procedure to abate existing pollution and restore the quality of polluted waters, while through a system of permits it prevents any increase in waste discharges which would impair desired water uses.

The Act is designed to give the agency broad discretion in administration of the program and makes its jurisdiction complete over all waters of the State. It avoids such restrictive practices as exemption of particular industries or geographic areas and legislative classification of particular streams for specified water uses.

While the Act is complete in itself, it rests on a framework of other State statutory and constitutional provisions. Perhaps one of the most important of these relates to municipal financing. No water pollution control program can operate successfully unless the State and its political subdivisions can finance the construction and operation of remedial works for treatment of wastes. The Suggested State Water Pollution Control Act does not treat this subject in view of its complexity and the numerous individual problems peculiar to particular States. Reference is made to the Council of State Government's 1949 program of suggested State legislation for a general approach to the problem and suggestions for individual States.

While a section-by-section analysis of the Act will not be attempted, some comments may be directed to its principal features.

Pollution - The most important definition in the Act is the definition of "pollution," which is designed to protect all legitimate uses of waters of the State. To this end, "pollution" as defined includes both discharges of wastes actually or potentially harmful to such uses and also altering the properties of the waters in such a way as to be harmful. The latter, for example, would cover heating of water in such a way as to deplete oxygen supply and reduce the capacity of the water to support fish life or stabilize discharges of wastes. This definition must be read together with subsequent sections of the Act authorizing the classification of waters and the setting of standards of water quality. Discharges which violate such standards and classifications are declared unlawful, but discharges consistent with them are not considered "pollution" for purposes of the Act. The Act, therefore, gives effect to the agency's action in classifying waters and setting standards but does not hold its enforcement powers in abeyance until such action can be completed.

Type of Administrative Agency - One of the most important questions for any State to decide in preparing water pollution control legislation is the agency to which enforcement of the program will be entrusted. As has been said, most early legislation of this type vested authority in the State health department. The problems of water pollution control, however, concern other interests than health, and in a broader sense are an integral part of the problem of preserving the water resources of the State. For example, wildlife and conservation interests, industry, municipalities and agriculture have a stake in the enforcement of a water pollution control program. It is believed important that any agency which is set up to administer such a program should be so constituted as to take into account the interests and views of these and other affected groups in addition to health considerations.

Most States which have recently enacted water pollution control legislation have entrusted its enforcement to a board representative of the interests considered to be affected. Such boards are sometimes made up of representatives of various departments of the State government, sometimes of citizens from outside the government, and more frequently of a combination of the two. Adoption of this form has the advantage of facilitating representation of affected interests in the agency. If it is adopted, provision should also be made for an executive secretary to serve as the administrator of the program and to carry out the policies adopted by the board. Some States may wish to vest responsibility for the program in a single administrator. If this

is done, it would seem advisable to secure representation of affected interests through an advisory council, and it may also be considered desirable to set up a board of review to hear appeals from the single administrator's decisions.

The Suggested State Water Pollution Control Act has incorporated alternative provisions covering both the board and the single administrator type of agency.

States adopting water pollution control legislation recently have in some cases set up completely independent agencies, but have more frequently placed the agency within an existing State department, generally the department of health. This is a matter for determination by each individual State. Where the agency is set up within an existing State department, however, it is believed desirable to vest it with authority to act independently since an agency representing so broad a field of the State interests should not be subjected to the supervisory control of any single State department which operates in a comparatively narrower field.

Where the agency is established in an existing State department it is recommended that it be placed in the State health department. Not only is health a major public interest and an integral part of an active water pollution control program, but also the health department usually has trained personnel and facilities which may be utilized for work in connection with the water pollution control program. It will usually be true that the health department is already carrying on some of the functions which this Act vests in the new agency. Use of health department personnel and facilities therefore will avoid unnecessary duplication of functions.

Classification of Waters -- Standards of Water Quality - Some agencies in the administration of water pollution control programs have classified the waters of the State according to their use and have established standards of quality for such waters in accordance with their respective uses. Proponents of this method have urged that classification and setting of standards is an essential element of any comprehensive program and also that no enforcement action can be undertaken without determination of the use to which a particular body of water should be put and the degree of quality which the water must have in order to be suitable for such use. This approach, however, has been severely criticized by others who maintain that the process is adminis-

tratively difficult and time consuming, that classifications once made are hard to change and tend to create vested interests, and that the tendency will be to reduce waters to the level of mere carriers of wastes because of the pressure of special interests.

The Suggested State Water Pollution Control Act authorizes the agency to classify waters and set up standards of quality for water falling within particular classifications but does not make it mandatory to do so. Classifications and standards once promulgated have a definite legal effect and their violation is made unlawful; conversely, discharges which comply with such classifications and standards are not pollution within the meaning of this Act. In view of the number of persons affected by classifications and standards, it is required that their adoption be preceded by a public hearing open to all residents of the areas affected, and that adequate notice thereof be given. The Act provides that in classifying waters and setting standards the agency will be guided by the principle of constantly seeking to improve water quality and upgrading streams for progressively higher uses to the maximum extent practicable.

Permits - Potentially one of the most effective techniques for control of water pollution is a permit system, under which discharges of wastes into any waters of the State are prohibited except as permitted by the agency after examination of plans, specifications and other data. Through this means the agency can either prohibit discharges altogether or condition their approval on treatment adequate to protect legitimate water uses. The Act contains broad provisions authorizing the agency to require permits for waste discharges and additions to plants which would result in increased pollution. Normally, the permit system would be restricted to new pollution or increases in existing waste discharges, but the breadth of the language employed is sufficient to enable the agency to extend the requirement to existing discharges where this is considered desirable administratively.

Enforcement - The Act affords a variety of methods for proceeding against any alleged polluter. It is made unlawful to cause any pollution of the waters of the State or to violate any order issued by the agency, including an order establishing a classification of waters or standards of water quality. Pollution of waters of the State is declared to be a public nuisance and is therefore subject to abatement in accordance with State practice for abatement of nuisances. Violation of the

provisions of the Act or any order or determination by the agency or failure to perform any duty imposed by the Act is declared to be a misdemeanor. In addition, the Attorney General has the duty to bring an action for an injunction against any person violating any provision of the Act or any order of the agency. The principal method of making the program effective through compulsory process, however, is by administrative action. The agency is empowered to issue orders against alleged polluters after adequate opportunity for hearing. Such orders if not appealed to the courts become final and are enforceable in much the same way as the judgment of a court. The same administrative hearing procedure is employed in cases of revocation, denial or modification of permits.

Appeals may be taken to the courts from orders of the agency. Such appeals do not involve trial de novo but are primarily reviews of the legal propriety of the agency's decision. If the prescribed statutory procedure has been followed and the determination is supported by substantial evidence, the order of the agency will be affirmed by the court.

It is recognized that the provisions of the Act for administrative hearings and judicial review will not be appropriate in all cases. Each State will necessarily adapt them to their own administrative and judicial practice and existing statutes. The provisions of the Act, however, embody principles which are believed desirable in this type of legislation.

Administrative Powers - The Act confers on the agency the requisite administrative powers to carry out its responsibilities. Thus, the agency is empowered to hold hearings, subpoena witnesses, enforce its subpoenas, administer oaths, examine plans and specifications, require the keeping of records and the making of reports, and enter on property at reasonable times for purposes of inspection and investigation.

SUGGESTED STATE WATER POLLUTION CONTROL ACT

(Title. It should conform to State requirements. The following is a suggestion; a more complete title should be used where necessary.)

"AN ACT to establish a State water pollution control agency, and to control, prevent and abate pollution of the surface and underground waters of the State."

(Be it enacted, etc.)

Section 1. Statement of Policy.[1] Whereas the pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial,[2] recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this State is closely related to the problem of water pollution in adjoining States, it is hereby declared to be the public policy of this State to conserve the waters of the State and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the State without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the State, agencies of other States and the Federal Government in carrying out these objectives.

1/ Where a State has committed itself to a general water resources program, a declaration to the effect that water pollution control is an integral part of such program should be added. States in the West and Southwest may want to add a statement to the effect that water pollution control is basically a water conservation program in their States.

2/ Specific wastes which are of particular interest to an individual State may be included, such as mine wastes, etc.

Section 2. Definitions. For the purposes of this Act, the following words and phrases shall have the meanings ascribed to them in this section.

(a) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(b) "Wastes" means sewage, industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the State.

(c) "Sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(d) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes.

(e) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(f) "Waters of the State" means all streams, 3/ lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof.

(g) "Person" means the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or other entity.

3/ Seaboard States should include within this definition such coastal waters as are within the jurisdiction of the State.

Section 3. Creation and Organization of Board; Meetings; Employees. There is hereby created and established 4/ a State water pollution control board hereinafter referred to as the "Board" which shall be composed of _____ members as follows: The Director of the Department of Health; the Director of the Department of Agriculture; the Director of the Department of Conservation, Fish and Game; and two members appointed for terms of _____ years by the Governor. One of the members appointed by the Governor shall be experienced in the field of municipal government and one shall be experienced in the field of industrial activities. 5/ The Board is directed to carry out the functions and duties conferred on it by this Act.

4/ The State water pollution control authority may be set up as an independent board or may be established within an existing State department. Regardless of where the Board is placed, it is important that the statutory authority flow directly to it and that it have independent powers of operation.

In cases where the Board is placed in an existing State department, it is suggested that it be placed within the State health department because of the close connection between the work of the State health department and water pollution control activities. Further, State health departments in most cases are already active in the field of water pollution control and have trained technical staffs working on pollution control problems.

The "Suggested State Water Pollution Control Act" may be adapted to the placing of water pollution control authority within the State health department by inserting the words "in the State health department" after the word "established"; virtually no other change will be necessary.

5/ This list of members of the Board is suggestive only and is not meant to be inclusive. The membership of the Board will necessarily vary from State to State. In addition to those mentioned above, some States may desire to place members on the Board for specified terms who are representatives of such fields as public affairs, recreational and resort interests, and broad water resources activities.

Each ex-officio member of the Board may, by official order filed in his respective department, designate a deputy in his department to perform the duties of the member making the designation. Such persons, if any, designated pursuant to this section, shall have the powers and be subject to the duties and responsibilities of the officer appointing him. 6/

No additional compensation shall be allowed any member of the Board 7/ for services rendered in that capacity. Actual and necessary travel and other expenses incurred by members in the discharge of their official duties as members of the Board shall be paid out of any funds which are or may become available for the purposes of this Act.

The Board shall organize and annually select one of its members to serve as chairman and one of its members to serve as vice-chairman, shall hold at least four regular meetings each calendar year and shall keep a record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman, and must be called by him upon receipt of a written request therefor signed by two or more members of the Board. Written notice of the time and place of each meeting shall be delivered to the office of each member of the Board and the executive secretary. A majority of the members of the Board shall constitute a quorum.

The Board shall appoint an executive secretary 8/ who

6/ It may be necessary in some States also to provide that: "Such designation shall be deemed temporary only and shall not affect the civil service or retirement rights of any person so designated."

7/ In States where it is customary to provide an honorarium for members of State Boards and Commissions, similar allowances should be made for those members of the State water pollution control board who are not serving in an ex-officio capacity.

8/ It may be necessary to include a statutory provision for the salary of the executive secretary, if the State statutes do not provide an overall compensation system for State officials.

shall direct and carry out all water pollution control activities vested in the Board. Such executive secretary shall be a person fully trained and experienced in the field of water pollution control and if the Board so desires, may be a present employee of the State government. The executive secretary in the interim between meetings of the Board shall have authority to perform in the name of the Board all functions and duties of the Board except the authority to adopt and promulgate standards, rules and regulations; classify streams; revoke permits; and issue or modify orders.

The Board may employ, compensate, and prescribe the powers and duties of such officers, employees, and consultants, in accordance with the laws of this State, as may be necessary to carry out the provisions of this Act. However, technical, legal or other services shall be performed, insofar as practicable, by personnel of the department of health and by other State departments, agencies, and offices.

The Board may delegate to the executive secretary, officers, employees, and consultants of the Board such functions and duties as are vested in the Board by this Act, except the authority to adopt and promulgate standards, rules and regulations; classify waters; revoke permits; and issue or modify orders.

((Alternate Section 3))

Section 3. Creation and Organization of Agency and Advisory Board; Meetings, Employees. (a) There is hereby created and established 9/ a State water pollution control

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9/ The State water pollution control authority may be set up as an independent Agency or may be established within an existing State department. Regardless of where the Agency is placed, it is important that the statutory authority flow directly to it and that it have independent powers of operation.

In cases where the Agency is placed within an existing State department, it is suggested that it be placed within the State health department because of the close connection between the work of the State health department and water pollution control activities.

agency [10] hereinafter referred to as the "Agency."

(b) The Governor shall appoint an administrator who shall be the head of the Agency, shall perform all functions and duties given to the Agency under this Act, and shall direct and carry out all water pollution control activities vested in the Agency. [11] Such administrator shall be a person fully trained and experienced in the field of water pollution control and if the Agency so desires may be a present employee of the State government.

(c) The Agency may employ, compensate, and prescribe the powers and duties of such officers, employees, and consultants in accordance with the laws of the State as may be necessary to carry out the provisions of this Act. However, technical, legal or other services shall be performed, insofar as practicable, by personnel of the department of health and by other State departments, agencies, and offices.

(d) The Administrator may delegate to the executive secretary, officers, employees, and consultants of the Agency such functions and duties as are vested in the Agency by this Act, except the authority to adopt and promulgate standards, rules and regulations; classify waters; revoke permits; and issue or modify orders.

9/ (cont'd) Further, State health departments, in most cases, are already active in the field of water pollution control and have trained technical staffs working on the problem.

The "Suggested State Water Pollution Control Act" may be adapted to the placing of water pollution control authority within the State health department by inserting the words "in the State health department" after the word "established"; virtually no other change will be necessary.

10/ It may be desirable to modify this type of Agency by making provision for a Review Board to review the final orders of the single administrator.

11/ It may be necessary to include a statutory provision for the salary of the administrator, if the State statutes do not provide an overall compensation system for State officials.

(e) There is hereby established within the Agency a State Water Pollution Control Advisory Board consisting of _____ members. Such members are to be appointed by the Governor for terms of _____ years or until successors shall be appointed or qualified, [12] and shall consist of the Administrator of the State water pollution control agency who shall be chairman, and persons experienced in the fields of public health; agriculture; conservation, fish and wildlife; political subdivisions; and industrial activities. [13] The Water Pollution Control Advisory Board shall hold at least two regular meetings each calendar year. It shall be the duty of the Board to review the policies and program of the State water pollution control agency as developed under authority of this Act and to make recommendations thereon to the Administrator of the Agency.

No compensation shall be allowed any members of the Board [14] for services rendered in that capacity; however, actual and necessary travel and other expenses incurred by members in the discharge of their official duties as members of the Agency shall be paid out of any funds which are or may become available for the purposes of this Act.

Section 4. Powers and Duties. The Board [15] shall have and may exercise the following powers and duties:

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[12] Provision should be made for overlapping terms of office for the members of the Advisory Board.

[13] This list of members of the Advisory Board is suggestive only and is not to be deemed to be inclusive. The membership of the Board will necessarily vary from State to State and may include ex-officio members.

[14] In States where it is customary to provide an honorarium for members of State Boards and Commissions, similar allowances should be made for those members of the State Water Pollution Control Advisory Board who are not serving in an ex-officio capacity.

[15] The word "Board" is used throughout subsequent sections of the Act. Where alternate section 3 is selected, the word "Board" should be changed to "Agency."

(a) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the State;

(b) To advise, consult, and cooperate with other agencies of the State, the Federal Government, other States and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this Act;

(c) To accept and administer loans and grants from the Federal Government and from other sources, public or private, for carrying out any of its functions;

(d) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this Act;

(e) To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

(f) To adopt, modify or repeal and promulgate standards of quality of the waters of the State and classify such waters according to their best uses in the interest of the public under such conditions as the Board may prescribe for the prevention, control and abatement of pollution;

(g) To adopt, modify, repeal, promulgate and enforce rules and regulations implementing or effectuating the powers and duties of the Board under this Act;

(h) To issue, modify or revoke orders (1) prohibiting or abating discharges of wastes into the waters of the State; (2) requiring the construction of new disposal systems or any parts thereof or the modification, extension or alteration of existing

disposal systems or any parts thereof, or the adoption of other remedial measures to prevent, control or abate pollution; and (3) setting standards of water quality, classifying waters or evidencing any other determination by the Board under this Act;

(i) To review plans, specifications or other data relative to disposal systems or any part thereof in connection with the issuance of such permits as are required by this Act;

(j) To issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the discharge of wastes into the waters of the State, and for the installation, modification or operation of disposal systems or any parts thereof;

(k) To exercise all incidental powers necessary to carry out the purposes of this Act.

Section 5. Prohibitions. (a) It shall be unlawful for any person to cause pollution as defined in section 2 (a) of this Act of any waters of the State or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the State. Any such action is hereby declared to be a public nuisance.

(b) It shall be unlawful for any person to carry on any of the following activities without first securing such permit 16/ from the Board, as is required by it, for the disposal of all wastes which are or may be discharged thereby into the waters of the State: (1) the construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto; (2) the increase in volume or strength of any wastes in excess of the

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16/ Some States may wish to validate by statute permits or approval of plans and specifications presently in effect which have been issued by competent State authorities such as the department of health.

permissive discharges specified under any existing permit; (3) the construction, installation, or operation of any industrial or commercial establishment [17] or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the State or would otherwise alter the physical, chemical or biological properties of any waters of the State in any manner not already lawfully authorized; (4) the construction or use of any new outlet for the discharge of any wastes into the waters of the State.

The Board under such conditions as it may prescribe, may require the submission of such plans, specifications and other information as it deems relevant in connection with the issuance of such permits.

Section 6. Classification of Waters; Standards of Water Quality. (a) In order to effectuate a comprehensive program for the prevention, control and abatement of pollution of the waters of the State, the Board is authorized to group such waters into classes according to their present and future best uses for the purpose of progressively improving the quality of such waters and upgrading them from time to time by reclassifying them, to the maximum extent that is practical and in the public interest. Standards of quality for each such classification consistent with best present and future use of such waters may be adopted by the Board and from time to time modified or changed. [18]

(b) Prior to classifying waters or setting standards or modifying or repealing such classifications or standards the Board shall conduct public hearings in connection therewith. Notice of public hearing for the consideration, adoption or amendment of the classification of waters and standards of purity and quality thereof shall specify the waters concerning which a classification is sought to be made or for which standards are sought to be adopted and the time, date, and place of such hearing. Such notice shall be published at least twice in

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17/ Western and Southwestern States should include the construction, installation, modification or operation of irrigation projects.

18/ States which adhere to the "prior acquisition doctrine" should take cognizance of the effect that classification will have on water rights established under other laws.

a newspaper of general circulation in the area affected and shall be mailed at least twenty days before such public hearing to the chief executive of each political subdivision of the area affected and may be mailed to such other persons as the Board has reason to believe may be affected by such classification and the setting of such standards.

(c) The adoption of standards of quality of the waters of the State and classification of such waters or any modification or change thereof shall be effectuated by an order of the Board which shall be published in a newspaper of general circulation in the area affected. In classifying waters and setting standards of water quality or making any modification or change thereof, the Board shall announce a reasonable time for persons discharging wastes into the waters of the State to comply with such classification or standards, unless such discharges create an actual or potential hazard to public health.

Any discharge in accord with such classification or standards shall not be deemed to be pollution for the purposes of this Act.

Section 7. Proceedings before Board. (a) Whenever the Board determines there are reasonable grounds to believe that there has been a violation of any of the provisions of this Act or of any order of the Board, it may give written notice to the alleged violator or violators specifying the causes of complaint. Such notice shall require that the matters complained of be corrected or that the alleged violator appear before the Board at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (e) of this section not less than _____ days before the time set for the hearing.

(b) The Board shall afford an opportunity for a fair hearing in accordance with the provisions of section 8 to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing the Board shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of this Act and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Board itself, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Board which

shall thereupon enter its order on the basis of such record and recommendations. The order of the Board shall become final and binding on all parties unless appealed to the courts as provided in section 11 within _____ days after notice has been sent to the parties.

(c) Any person who is denied a permit by the Board or who has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application within _____ days after receipt of notice from the Board of such denial, revocation or modification.

(d) Whenever the Board finds that an emergency exists requiring immediate action to protect the public health or welfare, it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Notwithstanding the provisions of subsection (b) of this section such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the Board shall be afforded a hearing as soon as possible. On the basis of such hearing the Board shall continue such order in effect, revoke it or modify it.

(e) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Board may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the Board; or such service may be made by mailing a copy of the notice, order, or other instrument by registered mail, directed to the person affected at his last known post office address as shown by the files or records of the Board, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the Board.

Every certificate or affidavit of service made and filed as herein provided shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect. 19/

19/ Where not otherwise covered by general provisions of State statutes applicable to all administrative agencies, consideration should be given to covering the following points in the "Suggested

Section 8. Hearings. The hearings herein provided may be conducted by the Board itself at a regular or special meeting of the Board, or the Board may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Board at any time and place. A record or summary of the proceedings of such hearings shall be taken and filed with the Board, together with findings of fact and conclusions of law made by the Board. In any such hearing a member of the Board or a hearing officer designated by it shall have the power to administer oaths, examine witnesses and issue in the name of the Board notice of the hearings or subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter involved in such hearing. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the _____ court shall have jurisdiction upon application of the Board or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

Section 9. Inspections and Investigations; Maintenance of Records. The Board or its duly authorized representative shall have the power to enter at reasonable times upon any private or or public property for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any waters of the State.

Any authorized representative of the Board may examine any records or memoranda pertaining to the operation of disposal systems. The Board may require the maintenance of records relating to the operation of disposal systems. Copies of such records must be submitted to the Board on request.

19/ (cont'd) Act":

(1) Filing or recording the regulations and orders of the State agency with a designated official;
(2) Making such filing and recording prima facie evidence that all requirements of law have been complied with;
(3) Requiring all courts to take judicial notice of regulations and orders when filed or recorded as prescribed;
(4) Certifying copies.

Section 10. Penalties;[20] Injunctions. (a) Any person[21] who shall violate any of the provisions of, or who fails to perform any duty imposed by, this Act or who violates any order or determination

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20/ A number of States provide by statute for penalties, additional to those outlined in section 10, for persons killing fish by polluting the waters of the State. Such a provision appears logical and desirable, since the pollution has, in effect, destroyed property of the State and the person responsible should be liable to pay damages therefor. Such provision has not been included in this "Suggested Act", however, since it is considered more appropriate for inclusion in the conservation laws of the State. If the State wishes to include it in this Act, the following language may be employed:

> "(c) Any person who violates any of the provisions of, or fails to perform any duty imposed by, this Act, or who violates an order or other determination of the Board promulgated pursuant to this Act, and causes the death of fish or other wildlife shall, in addition to the penalties provided in subsections (a) and (b) be liable to pay to the State an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the Board after consultation with the fish and game commission. Such amount may be recovered by the Board on behalf of the State in a civil action brought in the _____ court."

21/ Where the order is directed against a municipality, the responsible municipal officials would have responsibility for taking steps to comply with it. To enable them to take the necessary action, there must be adequate statutory provision for financing such action by the municipality. Issuance of revenue bonds is a method of financing which has received increasingly broad acceptance in recent years. In those States where such issuance is contingent on a vote of the electors of the municipality, enforcement of the Act would be facilitated by a provision waiving the necessity of such a vote in the case of revenue bonds issued to finance the cost of complying with a final order abating pollution. It is believed that the requirement of such a vote is not appropriate where the legal obligation of the municipality to construct a treatment works or take other remedial action has been established under a statute.

of the Board promulgated pursuant to this Act shall be guilty of a misdemeanor [22] and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

(b) It shall be the duty of the Attorney General on the request of the Board to bring an action for an injunction against any person violating the provisions of this Act, or violating any order or determination of the Board. In any action for an injunction brought pursuant to this section, any finding of the Board after hearing or due notice shall be prima facie evidence of the fact or facts found therein.

Section 11. Review. [23] (a) An appeal may be taken from any final order or other final determination of the Board, by any person who is or may be adversely affected thereby, or by the Attorney General on behalf of the State to the _____ court of the State of the area affected or to the _____ court of (seat of Government). Within 30 days after receipt of a copy of the order, or other final determination, or after service of notice thereof by registered mail, the appellant or his attorney shall serve a notice of appeal on the Agency through its ((executive secretary)) or ((Administrator)) provided that during such 30-day period the court may for good cause shown extend such time for not exceeding an additional 60 days. The notice of appeal shall refer to the action of the Board appealed from, shall specify the grounds of appeal, including both points of law and fact

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22/ If the penalty provided for misdemeanors by general statutes is considered insufficient, the State may wish to strike out the balance of the sentence after "misdemeanor" and substitute the following:

"and upon conviction thereof shall be punished by a fine of not more than $_____ or by imprisonment for a term of not more than one year or by both such fine and imprisonment. In addition thereto such person may be enjoined from continuing such violation."

23/ The above appeal procedure is suggestive only. In any particular State such procedures will necessarily be adapted to the existing judicial structure and practice.

which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten days of the service of the notice and thereupon the court shall have jurisdiction of the appeal.

(b) The appellant and the Board shall in all cases be deemed the original parties to an appeal. The State through the Attorney General or any other person affected may become a party by intervention as in a civil action upon showing cause therefor. The Attorney General shall represent the Board, if requested, upon all such appeals unless he appeals or intervenes in behalf of the State. If the Attorney General or a member of his staff is not available to represent the Board in any particular proceeding, the Board is empowered to appoint special counsel for such proceeding. No bond or deposit for costs shall be required of the State or Board upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

(c) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules related to a trial in the nature of an appeal in equity of an administrative determination. All findings of fact by the Board are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the Board at the hearing. In any appeal or other proceeding involving any order, or other determination of the Board, the action of the Board shall be prima facie reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with. A copy of the proceedings before the Board shall be certified to the Court in connection with each appeal.

(d) A further appeal may be taken to the Supreme Court of the State in the same manner as appeals in equity are taken.

Section 12. Conflicting Laws. This Act shall not be construed as repealing any laws of the State relating to the pollution of waters thereof or any conservation laws, but shall be held and construed as auxiliary and supplementary thereto, except to the extent that the same are in direct conflict herewith.

Section 13. Existing Rights and Remedies Preserved. It is the purpose of this Act to provide additional and cumulative

remedies to prevent, abate and control the pollution of the waters of the State. Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this Act, or any act done by virtue thereof, be construed as estopping the State, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Section 14. Severability. If any section, subsection, sentence, clause, phrase or words of this Act is for any reason held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this Act.

Section 15. Short Title. This Act may be cited as the (State) Water Pollution Control Act.

NOTE: Where State law or practice requires that an appropriation authorization or an actual appropriation be made with basic legislation, such provisions should be incorporated into the "Suggested Act."